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8 **Attorneys for Plaintiffs**

9 UNITED STATE DISTRICT COURT

10 Northern District of California

11 ANNA NEPHEW, PETER NEPHEW, AN,
12 KN, and IN,

Case No.

COMPLAINT

13 Plaintiffs,

14 vs.

15 SANTA ROSA MEMORIAL HOSPITAL, ST.
16 JOSEPH HEALTH and DOES 1-10, inclusive,

Defendants.
17 _____/

18 **STATEMENT OF THE CASE**

19 1. On April 15, 2014 ANNA R. NEPHEW was 22 weeks pregnant with her fourth
20 child.

21 2. ANNA began to experience contractions and severe pain at work. She went home
22 for lunch and was unable to return.

23 3. ANNA'S husband, PETER NEPHEW called to the ER at Defendants' hospital,
24 the nearest hospital, to advise they were enroute with ANNA in severe pain and having
25 contractions.

26 4. Upon arrival ANNA was asked about her insurance. ANNA advised her
27 insurance information.

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5. Thereafter, the hospital, its agents and employees recognized that this was effectively an uninsured patient, covered only by a managed care Medicaid program or otherwise limited in coverage and not the type of patient that would benefit the hospital's bottom line.

6. Despite knowing that Federal law EMTALA specifically applied to this woman in labor appearing at their emergency department for care, and that Defendant hospital's own policies and procedures also mandated a Medical Screening Exam (MSE) and Stabilization of ANNA's condition, Defendants and each of them failed and refused to follow these mandatory procedures and instead delayed and refused all necessary emergency care and treatment while repeatedly asking questions about her insurance and other matters. At no time was ANNA provided any medical care or treatment nor even a minimal medical evaluation. Nothing was done for ANNA'S severe pain. Nothing was done for ANNA'S bleeding. Nothing was done for ANNA'S premature contractions.

7. Instead, ANNA was required to leave the hospital and drive with her husband and three small children to another hospital.

8. At the other hospital, care and treatment was provided. By then it was too late to prevent the premature birth of ANNA and PETER'Ss fourth child, their first son, Gabriel Nephew. Gabriel was not able to survive the trauma and premature labor and premature birth. Gabriel died the next day after he was born.

IDENTIFICATION OF PARTIES

A. Plaintiffs.

9. ANNA NEPHEW, 830 Jennings Avenue, Unit 304, Santa Rosa, CA 95401.

10. PETER NEPHEW, 830 Jennings Avenue, Unit 304, Santa Rosa, CA 95401.

11. AN, 830 Jennings Avenue, Unit 304, Santa Rosa, CA 95401.

12. KN, 830 Jennings Avenue, Unit 304, Santa Rosa, CA 95401.

13. IN, 830 Jennings Avenue, Unit 304, Santa Rosa, CA 95401.

B. Defendants.

14. SANTA ROSA MEMORIAL HOSPITAL, 1165 Montgomery Drive, Santa Rosa, California 95405.

1 15. ST. JOSEPH HEALTH, 3345 Michelson Drive, Ste 100, Irvine, CA 92612.

2 16. Does 1-100.

3 **JURISDICTION AND VENUE**

4 17. This case belongs in federal court under federal question jurisdiction because it is
5 about federal law(s) or right(s) of EMTALA.

6 18. Venue is appropriate in this Court because all Defendants live in California and at
7 least one of the Defendants lives in this district and because a substantial part of the events being
8 sued about happened in this district.

9 19. Plaintiffs hereby demand a jury trial in this action.

10 **INTRADISTRICT ASSIGNMENT**

11 20. This lawsuit should be assigned to San Francisco/Oakland Division of this Court
12 because this is the district where the event occurred.

13 **STATEMENT OF FACTS AND CLAIMS**

14 21. On April 15, 2014 ANNA R. NEPHEW was 22 weeks pregnant with her fourth
15 child.

16 22. ANNA began to experience contractions and severe pain at work. She went home
17 for lunch and was unable to return.

18 23. ANNA'S husband, PETER NEPHEW called to the ER at Defendants' hospital,
19 the nearest hospital, to advise they were enroute with ANNA in severe pain and having
20 contractions.

21 24. Upon arrival ANNA was asked about her insurance. ANNA advised her
22 insurance information.

23 25. Thereafter, the hospital, its agents and employees recognized that this was
24 effectively an uninsured patient, covered only by a managed care Medicaid program or otherwise
25 limited in coverage and not the type of patient that would benefit the hospital's bottom line.

26 26. Despite knowing that Federal law EMTALA specifically applied to this woman in
27 labor appearing at their emergency department for care, and that Defendant hospital's own
28 policies and procedures also mandated a Medical Screening Exam (MSE) and Stabilization of

1 ANNA's condition, Defendants and each of them failed and refused to follow these mandatory
2 procedures and instead delayed and refused all necessary emergency care and treatment while
3 repeatedly asking questions about her insurance and other matters. At no time was ANNA
4 provided any medical care or treatment nor even a minimal medical evaluation. Nothing was
5 done for ANNA'S severe pain. Nothing was done for ANNA'S bleeding. Nothing was done for
6 ANNA'S premature contractions.

7 27. Instead, ANNA was required to leave the hospital and drive with her husband and
8 three small children to another hospital.

9 28. At the other hospital, care and treatment was provided. By then it was too late to
10 prevent the premature birth of ANNA and PETER'Ss fourth child, their first son, Gabriel
11 Nephew. Gabriel was not able to survive the trauma and premature labor and premature birth.
12 Gabriel died the next day after he was born.

13 29. Defends intentionally and recklessly and negligently refused and failed to follow
14 federal law EMTALA and state law and their own policies and procedures all of which mandated
15 medical screening and stabilization Anna's emergency medical conditions of severe pain and
16 premature contractions and bleeding when she presented to their ER.

17 30. Defendants' pattern and practice was to deny and avoid care for indigent and
18 uninsured and underinsured and those with substance and/or mental health issues or apparent
19 questionable immigration status.

20 31. Despite claiming to be a charitable and caring organization by history Defendants
21 have instead placed corporate profits and revenues ahead of patient care and safety due to
22 financial pressures they have received from competing facilities including but not limited to
23 Sutter Heath and Kaiser and for other unknown reasons.

24 32. Defendants have repeatedly "dumped" other patients in violation of EMTALA
25 including but not limited to Michael Torres, whom they discharged to die in their parking lot due
26 to severe pneumonia of days duration which went undiagnosed and untreated and for which the
27 hospital was cited by federal authorities.

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33. Defendants have also effectively discharged other patients by making them wait inordinate times and discouraging them from coming to the ER and by pretending to perform the requisite screening and stabilization procedures but instead minimizing all contacts and care and only seeking to try to avoid liability for violating EMTALA and other laws and the hospital's own policies and procedures.

34. SANTA ROSA MEMORIAL HOSPITAL (SRMH) has been repeatedly been cited for intentional understaffing by the CDPH.

35. SRMH has repeatedly discharged patients prematurely in order to maximize their income and profits regardless of the risks imposed thereby on the patients.

36. ANNA suffered extreme emotional distress due to Defendants' intentional and negligent infliction of emotional distress in refusing to provide her with treatment and delaying her emergency care and treatment and by instead first inquiring as to her insurance status and by forcing her to drive by her own private vehicle with her husband and three small children to another hospital just to get the mandatory and emergency treatment she needed for her severe pain and uncontrolled contractions and bleeding. ANNA'S suffering and distress continued due to her apprehension and fear about her unborn child and the lack of timely care and the ongoing extreme emotional distress to her husband and three young daughters. ANNA continued to suffer severe distress through the premature delivery, birth and struggles to survive and the ultimate death of her son, Gabriel Nephew.

37. PETER NEPHEW suffered severe emotional distress as did the three daughters, AN, KN and IN, as a result of the same misconduct.

FIRST CAUSE OF ACTION

(EMTALA 42 U.S.C. 1395dd)

38. Plaintiffs reincorporate paragraphs 1 through 37, above.

39. Defendants dumped and failed to screen or stabilize ANNA NEPHEW in violation of this law.

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SECOND CAUSE OF ACTION

(WELFARE & INSTITUTIONS CODE 15657 including 15657 Enhanced Remedies)

40. Plaintiffs reincorporate paragraphs 1 through 39 above.

41. ANNA NEPHEW was a dependent adult per Welfare and Institutions Section 15600, et seq. Defendants intentionally and recklessly neglected ANNA causing her severe suffering and emotional distress and premature labor and the loss of and death of her only son, Gabriel Nephew.

THIRD CAUSE OF ACTION

(Negligence)

42. Plaintiffs reincorporate paragraphs 1 through 41 above.

43. General negligence including unreasonable care in violation of the above stated Federal and California statutory law and as well as in violation of Defendants' own policies and procedures as well as breach of Defendants' general and fiduciary duties to provide standard and reasonable care. Plaintiffs and each of them also claim damages as direct victims and as bystanders due to negligent infliction of emotional distress.

FOURTH CAUSE OF ACTION

(Defendants' Intentional Infliction of Emotional Distress and Reckless Misconduct)

44. Plaintiffs reincorporate paragraphs 1 through 44 above.

45. General negligence including unreasonable care in violation of the above stated Federal and California statutory law and as well as in violation of Defendants' own policies and procedures as well as breach of Defendants' general and fiduciary duties to provide standard and reasonable care. Plaintiffs and each of them also claim damages as direct victims and as bystanders due to intentional infliction of emotional distress.

FIFTH CAUSE OF ACTION

(Wrongful Death of Gabriel Nephew)

46. Plaintiffs reincorporate paragraphs 1 through 45 above.

47. Defendants' failures were a substantial factor in causing the premature birth of and ultimate death of Gabriel Nephew, who survived for many hours but died in significant part

1 due to Defendants' failures and misconduct which were a substantial factor in his premature birth
2 and his death.

3 **DEMAND FOR RELIEF**

4 Wherefore, Plaintiffs pray for relief as follows:

- 5 1. For wrongful death damages, economic and non-economic, to each of Plaintiff
6 according to proof;
- 7 2. For enhanced remedies pursuant to California State Welfare & Institutions Code
8 §15657 including attorney fees and decedent's pre-death pain and suffering;
- 9 3. For exemplary/punitive damages including but not limited to as provided for by
10 California Civil Code §3294;
- 11 4. For EMTALA related remedies including, but not limited to, attorney fees and
12 costs and compensation to ANNA NEPHEW and PETER NEPHEW and their family members
13 and loved ones; and
- 14 5. Prejudgement interest in the amount of 10% per year or at the maximum level
15 recoverable by law.

16 DATED: April 14, 2015

LAW OFFICES OF DOUGLAS C. FLADSETH

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18 DOUGLAS C. FLADSETH
19 Attorney for Plaintiffs
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23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs hereby demand a jury trial in this action.

25 Dated: April 14, 2015

LAW OFFICES OF DOUGLAS C. FLADSETH

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28 DOUGLAS C. FLADSETH
Attorney for Plaintiffs